

**Before the
Federal Communications Commission
Washington, D.C. 20544**

In the Matter of

**Petition of CRC Communications of
Maine, Inc. and Time Warner Cable,
Inc. for Preemption Pursuant to
Section 253 of the Communications
Act, as Amended**

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Docket No. WC 10-143

**REPLY COMMENTS OF
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.
IN OPPOSITION TO THE PETITION OF
TIME WARNER CABLE AND CRC COMMUNICATIONS FOR PREEMPTION**

Texas Statewide Telephone Cooperative, Inc. ("TSTCI") files these reply comments, in opposition of the Petition of CRC Communications of Maine, Inc. ("CRC") and Time Warner Cable, Inc. ("TWC") for Preemption (the "Petition") in the above captioned proceeding, and would respectfully show as follows:

I. Introduction

TSTCI is a statewide association whose members are 38 of the small independent and cooperative telephone companies which provide basic telecommunication services into the vast farm and ranch rural areas of the state of Texas. Attached hereto as "Attachment A" is a list of the individual TSTCI members which is incorporated herein for all purposes. While TSTCI is not a party to these proceedings, it recognizes the potential negative impact that this proceeding could have on its Rural Incumbent Local Exchange Carrier ("RLEC") members. On August 30th, several parties filed comments regarding the Petition in response to a Public Notice put out by the Federal

Communications Commission (the “FCC” or the “Commission”).¹ TSTCI has reviewed the comments filed by the parties and brings these Reply Comments in support of the comments filed by UniTel, Inc. (“Unitel”), the Telephone Association of Maine (“TAM”), Maine Public Advocate (“MPA”) and the National Association of State Utility Consumer Advocates (“NASUCA”), and the Lincolnville and Oxford RLECs, and in opposition to the comments filed by the Voice on the Net Coalition (“VOTC”), Verizon, the National Cable & Telecommunications Assoc. (“NCTA”), Charter Communications Inc. (“Charter”), and COMPTEL.

Generally, TSTCI adopts, incorporates and supports the positions and arguments contained in the comments filed by Unitel and the MPA. TSTCI would also like to briefly emphasize a few important issues in response to the comments filed in support of the petition. First, TWC and CRC should not be granted a second bite at the apple. Next, the law regarding these issues is clear, and finally, any reliance upon the National Broadband Plan is misplaced.

II. Untimely Filing

TSTCI contends that this Petition is simply an untimely attempt to circumvent a process that was willingly acknowledged and participated in due to an unfavorable decision.

CRC and TWC (collectively the “Petitioners”) have filed this Petition for preemption of an Order of the Maine Public Utilities Commission (the “MPUC”) issued in 2008.² In that Order, the MPUC found that §251(f) exempted the rural ILECs from a duty to negotiate and that additional proceedings must be had to determine whether the rural exemption should be terminated for each of the rural ILECs. CRC and TWC did not immediately appeal or seek preemption of that order, but

¹See *Public Notice*, WC Docket No. 10-143, DA 10-1423, released July 29, 2010.

² Maine Public Utilities Commission, Order, May 5, 2008, Docket No. 2007-611.

instead, voluntarily participated in lengthy and thorough proceedings conducted by the MPUC in which the Petitioners had every opportunity to meet their burden of proof with regard to the relevant legal and economic standards. In those proceedings, the purpose for which the statutory exemption created in 251(f) was fulfilled.

The rural exemption was included in the Telecommunications Act of 1996 (the “Telephone Act”) to ensure the continued viability of small and rural telephone companies, and to protect them specifically from requests that are unduly economically burdensome and are not consistent with the principles of universal service. Authority was statutorily delegated to the states in order to allow that state to determine whether such exemption should be lifted with regard to any individual rural telephone company. Here, the Petitioners were allowed every opportunity to meet their burden of proof for lifting the exemption and the MPUC recently denied their request stating that the Petitioners did “not satisfy their burden of demonstrating that competitive entry by TWC and CRC would not be unduly economically burdensome and would be consistent with 42 U.S.C. § 254 (universal service).”³

Although fully recognizing and participating in the 251(f) proceedings to lift the rural exemption, the Petitioners are now seeking a second bite at the apple. The Petitioners now claim that the exemption did not apply to their initial request and thus the subsequent findings of the MPUC regarding economic hardship and universal service should be ignored. TSTCI contends that the Petitioners should not be allowed to submit to and present their case to meet the statutory

³ CRC Communications of Main, Inc., Investigation Pursuant to 47 U.S.C. § 251(f)(1) Regarding CRC Communications of Maine’s Request of UniTel, Inc., Docket Nos. 2009-40 through 2009-44, Order, p. 54, July 9, 2010.

requirements of the rural exemption, and then attempt to end run, circumvent and nullify them because they don't like the results.

III. The Law is Clear

TSTCI contends that the statutory framework and established law regarding the rural exemption is clear.

Many of the parties who have filed comments in this proceeding have referred to the findings in the *Brazos*⁴ case. TSTCI would like to point out that Brazos Telephone Cooperative, Inc. is one of the members of TSTCI. The reasoning and precedent set in the *Brazos* case is sound. Section 251(f)(1) sets forth the rural exemption stating “subsection (c) of this section shall not apply to a rural telephone company until...(ii) the State commission determines (under subparagraph (B)) that such request is not unduly burdensome, is technically feasible, and is consistent with section 254 of this title...” By its plain language, the exemption applies only to the duties set forth in § 251(c); however, the duty to negotiate the agreements is specifically set forth in § 251(c)(1), thus exempting rural telephone companies from any duty to negotiate an interconnection agreement unless and until the rural exemption is lifted. The *Brazos* court recognized that the policy evinced in § 251(f) is that rural telephone companies should be shielded from burdensome interconnection requests until the PUC has screened such requests.⁵ It goes on to say that this policy could be too easily thwarted if a CLEC could evade screening by denominating its request for interconnection as one solely under § 251(a) and (b).⁶

⁴*Sprint Communications Company v. Public Utilities Commission of Texas and Brazos Telephone Cooperative*, No. A-06-CA-065-SS, 2006 U.S. Dist. LEXIS 96569 (W.D. Tex. Aug. 14, 2006).

⁵ *Id.*

⁶ *Id.*

In this case the Petitioners are trying to evade screening and thwart the purpose of the rural exemption exactly as the *Brazos* court foresaw. TSTCI stands behind the statutory framework of the Telephone act and the precedent set in *Brazos* that a rural telephone company has no duty to negotiate interconnection agreements unless and until its rural exemption is lifted.

IV. Misplaced Reliance on the NBP

TSTCI finds it disturbing that such heavy reliance is being placed on comments in the NBP as authority for arguments in the comments filed supporting this petition. TSTCI contends that the recommendations in the NBP have no authority or precedent in this Docket and the Petition should be evaluated solely upon its merits and the current statutory and legal guidelines by which the parties are bound.

Many of the parties have repeatedly used statements made in paragraphs 2 and 3 of Recommendation 4.10 in the NBP as authority and support for their positions. While TSTCI recognizes the great efforts of FCC staff to draft the NBP, it is still a recommendation that has not been adopted. The NBP will still have to be subjected to proper notice of rulemaking, comment, and FCC action before any of its recommendations become final. While TWC was very effective in having this issue included in the NBP's recommendations, the nature and content of the recommendations may change as they move through the required processes and the further scrutiny and comment of both FCC staff and other interested parties. While the NBP does encourage competition, it cannot undermine and circumvent the statutory protections and policies created by Congress to sustain the viability of rural telephone carriers and universal service.

Clearly, the statutory provisions of the Telephone Act as established by Congress are controlling on this issue. The NBP in its current state has no legal authority. There is also no

authority which would allow such remarks and recommendations to undermine specific statutory language short of an action by Congress.

V. Conclusion

For all of the reasons stated herein, TSTCI asks the Petition be dismissed. The Petitioners should not be able to undermine the statutory authority and processes in which they willingly participated in to be allowed a second bite at the apple. The clear statutory framework of the Telephone Act and precedent in the *Brazos* decision provide clear legal authority which exempt RLECs from a duty to negotiate interconnection agreements unless and until their rural exemption is lifted; and, finally, the untested recommendations in the NBP cannot circumvent statutory requirements.

Again, TSTCI generally adopts the comments filed by UniTel and MPA and respectfully requests that the Petition be dismissed.

Respectfully Submitted,

Richards, Elder & Green, L.L.P.

Street: 3223 South Loop 289, Suite 424
Lubbock, Texas 79423

Mailing: P.O. Box 64657
Lubbock, Texas 79464-4657

Telephone: 806-798-8868

Facsimile: 806-798-8878

E-mail: drichards@regllp.com
dgibson@regllp.com

By



Don R. Richards, TX Bar No. 16836400

D. Daniel Gibson, TX Bar No. 24045939

*Attorneys for Texas Statewide Telephone Cooperative,
Inc.*

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Alenco Communications, Inc.
Big Bend Telephone Company, Inc.
Brazos Telecommunications, Inc.
Brazos Telephone Cooperative, Inc.
Cameron Telephone Company
Cap Rock Telephone Cooperative, Inc.
Central Texas Telephone Cooperative, Inc.
Coleman County Telephone Cooperative, Inc.
Colorado Valley Telephone Cooperative, Inc.
Community Telephone Company, Inc.
Cumby Telephone Cooperative, Inc.
Dell Telephone Cooperative, Inc.
E.N.M.R. Telephone Cooperative, Inc.
Eastex Telephone Cooperative, Inc.
Electra Telephone Company
Etex Telephone Cooperative, Inc.
Five Area Telephone Cooperative, Inc.
Ganado Telephone Company, Inc.
Hill Country Telephone Cooperative, Inc.
Industry Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company, Inc.
Livingston Telephone Company
Mid-Plains Rural Telephone Cooperative, Inc.
Nortex Communications, Inc.
Panhandle Telephone Cooperative, Inc.
Peoples Telephone Cooperative, Inc.
Poka Lambro Telephone Cooperative, Inc.
Riviera Telephone Company, Inc.
Santa Rosa Telephone Cooperative, Inc.
South Plains Telephone Cooperative, Inc.
Tatum Telephone Company
Taylor Telephone Cooperative, Inc.
Wes-Tex Telephone Cooperative, Inc.
West Plains Telecommunications, Inc.
West Texas Rural Tel. Cooperative, Inc.
XIT Rural Telephone Cooperative, Inc.